IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.2616 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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VIPULBHAI MANSINGBHAI CHAUDHRY, CHAIRMAN-Petitioner(s)
Versus
GC MURMU OR HIS SUCCESSOR IN THE OFFICE & 1-Respondent(s)

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Appearance :
MR SN SHELAT, learned Senior Counsel, with MR BS PATEL for Petitioner: 1 MRS RANJAN B PATEL for Petitioner: 1
MR PRAKASH K JANI for Respondent(s) : 1,
MR KAMAL B. TRIVEDI, learned Advocate General, with MS SANGITA K. VISHAN, AGP, for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 22/27.02.2007
ORAL JUDGMENT

(1) As the pleadings are complete, considering the issue involved, the petition has been heard finally. RULE. The learned advocates appearing for the respondents are directed to waive service of rule.

(2) This petition has been preferred challenging order dated 25.01.2007 (ANNEXURE-A) and following reliefs have been prayed for:

> 9. On the facts and circumstances mentioned hereinabove, the petitioner prays to Your Lordships that;
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> A) be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction quashing and setting aside the order passed by respondent No.1 dated 25.1.2007 at Annexure-A to the petition;
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> B) Pending admission and final disposal of this petition, Your Lordships will be pleased to stay further operation, execution and implementation of the order passed by respondent No.1 dated 25.1.2007 at Annexure-A to the petition;
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> C) Be pleased to award the cost of this petition;
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> D) Such other and further relief that is just, fit and expedient in the facts and circumstances of the case may be granted.

(3) Mehsana District Co-operative Milk Producers Union Limited (the Union) is a specified society as defined under Section 74C of The Gujarat Co-operative

Societies Act, 1961 (the Act). The petitioner was one of the Directors elected along with others to the Board of Directors (the Board) on 05.03.2005. At the first meeting held on 15.03.2005 the petitioner was elected unanimously by the Board of Directors as chairman.

(4) On 28.07.2005, as per resolution of the Board of Directors, one Shri Nagori was appointed as the Managing Director and power was delegated to the Managing Director to effect recruitment of staff, fix their salary and, the power of appointment included the power of terminating their services.

(5) On 04.02.2006 the District Registrar, Mehsana passed an order under Section 82 of the Act directing the petitioner and the Managing Director to furnish details in the proforma annexed with the said order as regards recruitment process undertaken by the Union. Such details were to be furnished by 13.02.2006. On 14.02.2006 the Board passed a resolution in response to the aforesaid order dated 04.02.2006 wherein, after narrating the

facts, the Board resolved that the Union and/or the Board were not required to furnish the details called for as provisions of Section 82 of the Act did not empower the District Registrar to call for such details. It was also resolved that the District Registrar may be informed accordingly and asked to drop the proceedings; also that the chairman and the Managing Director exercise their discretion and sense of propriety to uphold the stature of the Union considering the traditions and the integrity of the Union.

(6) Hence, on 16.02.2006 the petitioner addressed a letter to the District Registrar on the aforesaid lines. It was submitted that the District Registrar lacked powers to call for such information under Section 82 of the Act. At the same time certain details were also submitted.

(7) On 02.03.2006 the District Registrar forwarded a notice proposing penal action under Sections 147(d) and 148(d) of the Act. The members of the Board sent a common reply on 10.04.2006 while the

petitioner forwarded a separate individual reply on the same day, namely, 10.04.2006. To complete the chain of events it is necessary to note that no further action was taken pursuant to the aforesaid notice dated 02.03.2006. However, on 25.08.2006 the District Registrar, Mehsana submitted a report to the Registrar, Co-operative Societies, Gujarat State, respondent No.1 herein, regarding irregularities stated to have been committed and deliberate non-compliance of information despite categorical order of the District Registrar.

(8) In the meantime, it appears that one Khakhadi Dudh Utpadak Sahakari Mandali Limited, a milk producing co-operative society, moved this Court by way of Special Civil Application No.11791 of 2006. It was the case of the petitioner therein that despite successive representations dated 04.05.2006 and 12.06.2006 as regards the mismanagement of the Union, the authorities were not initiating any action to inquire into the irregularities pointed out by the said petitioner-Society. On 19.06.2006 the High

Court disposed of the petition by directing the Registrar to dispose of the representations of the said co-operative society and take appropriate steps as may be necessary, in the event there was any *prima facie* worth in the allegations made against the petitioner.

(9) On 31.08.2006 respondent No.1 issued show cause notice calling upon the petitioner to show cause as to why action should not be taken against the petitioner under Section 76B of the Act for non-compliance of the order made under Section 82 of the Act, more particularly in relation to recruitment of 461 persons during the tenure of the petitioner as chairman of the Union. In response thereto on 18.09.2006 the petitioner wrote to respondent No.1 asking respondent No.1 to supply various documents which were forming the basis of the show cause notice. After supplying the details, on 21.09.2006 respondent No.1 asked the petitioner that the petitioner may submit his reply to the show cause notice and remain present for hearing fixed on 10.10.2006.

(10) In the meantime, the petitioner had moved this Court by way of Special Civil Application No.21337 of 2006 challenging the aforesaid show cause notice issued under Section 76B of the Act. One of the principal grounds of challenge was lack of jurisdiction of respondent No.1 as, according to the petitioner, respondent No.1 could not have exercised jurisdiction under Section 76B of the Act, because the Union was a Multi-State Co-operative Society within the meaning of The Multi-State Co-operative Societies Act, 2002 (MSCS Act).

(11) Vide order dated 09.10.2006 the said petition came to be disposed of by the High Court with the following observations:

> "3.1 In facts of this case, therefore, it is provided that the petitioner if prays for additional time to file reply to the show cause notice, the same shall be granted. Learned advocate Shri Patel submitted that the petitioner will file reply latest by 1st November, 2006.
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> 4. Considering the contention of the petitioner that the concerned Cooperative Society being a

> Multi-State Cooperative Society, action u/s 76-B of the Gujarat Cooperative Societies Act cannot be initiated, the same be decided as a preliminary issue by the respondent before adverting to other issues arising in the show cause notice."

(12) On 19.10.2006 respondent No.1 communicated to the petitioner that as agreed by the advocate of the petitioner before the High Court the petitioner was required to submit his reply to the show cause notice on or before 01.11.2006, and that the reply may contain detailed material in support of the stand of the petitioner that the Union is a Multi-State Co-operative Society, not covered by the Act, and thus depriving respondent No.1 of powers and jurisdiction under Section 76B of the Act.

(13) On 30.10.2006 the petitioner filed reply to the show cause notice raising preliminary issue as regards non-applicability of the provisions of the Act as the Union was a Multi-State Co-operative Society. The matter was partly heard by respondent No.1 on 20.11.2006, at which hearing the petitioner was

represented by a learned advocate. At the said hearing respondent No.1 informed the learned advocate of the petitioner that the contentions raised by the petitioner about the Union being a Multi-State Co-operative Society were not acceptable and the preliminary point shall be finally decided along with the other issues on merits. Therefore, respondent No.1 asked the learned advocate for the petitioner to submit a detailed reply on merits.

(14) On 11.12.2006 the petitioner once again wrote to respondent No.1 asking respondent No.1 to decide the preliminary issue at the outset. This was followed up by another communication dated 18.12.2006 reiterating the earlier request to decide the preliminary issue first in point of time. Once again on 16.01.2007 similar request came to be made, namely, that respondent No.1 should take a decision on the preliminary issue in the first instance.

(15) On 25.01.2007 impugned order came to be made by respondent No.1, on the basis of the material

available on record, removing the petitioner as chairman of the Board of Directors, and as a member director of the Board. Respondent No.1 also passed a consequential order disqualifying the petitioner under the provisions of Section 76B(2) of the Act for a period of four years.

(16) Mr.S.N. Shelat, learned Senior Counsel representing the petitioner, assailed the impugned order on the following grounds:

(i) That the impugned order was vitiated as there was a breach of direction made by this Court in its order dated 09.10.2006 in the petition filed by the petitioner challenging the show cause notice. That this Court had categorically stated in Paragraph No.4 of the order that the contention of the petitioner that the Union was a Multi-State Co-operative Society and action under the Act was not permissible be decided as a preliminary issue by respondent No.1 before adverting to other issues arising in the show cause notice. That a preliminary issue cannot be treated as one of the issues. Reliance was placed on provisions of Order XIV Rule 2 sub-rule (2) of the Code of Civil Procedure, 1908 in support of the aforesaid proposition;

(ii) That there was breach of principles of natural justice. The petitioner was under a bona fide belief that in light of the High Court order dated 09.10.2006 respondent No.1 was required to decide only the preliminary issue, and only thereafter the petitioner was required to submit, if necessary, detailed reply on merits;

(iii) That provisions of Section 76B of the Act required removal of an officer by the Registrar if any officer makes persistent default or is negligent in performance of the duties imposed on the officer by the Act or the Rules or the Bye-laws, but there was no breach of any statutory duty in absence of any obligation on the petitioner either under the Act or the Rules or the Bye-laws;

(iv) Alternatively, a mere breach of an order under Section 82 of the Act cannot constitute negligence in duty or persistent default, because whether provisions of Section 82 of the Act could be pressed into service for obtaining the information of the nature which was called for was itself in dispute. In this context the learned advocate read provisions of Section 82 of the Act to submit that the scope of powers under the said provision was confined to the items specifically enumerated by the provision and could not apply in case

of matters which were not provided for by Section 82 of the Act. That if sub-sections (2) and (3) of Section 82 of the Act are perused it would give an indication that Section 82(1) of the Act cannot apply because the other two sections talk of recovery from the society or the officer concerned and that can only be in context of the matters specified in sub-section (1) of Section 82 of the Act. That Section 82 of the Act was a complete provision by itself, the remedy for default having been provided in the section and hence, even on this count, provisions of Section 76B of the Act could not be pressed into service;

(v) That the action is tainted with mala fides because the petitioner has been singled out and action taken in hot haste. For this purpose he placed reliance on the averments made in the petition as to the impugned order not having been made on the date on which it is purported to have been made considering the point of time of service and the manner of service of the impugned order;

(vi) Lastly, it was submitted that in relation to service matters, namely, appointment / recruitment of staff / employees did not fall within the domain of respondent No.1 authority and for this purpose he pressed into

service the decisions in the case of – (i) Malvikaben Bhikhabhai Patel & Ors. Vs. State of Gujarat & Ors., 1998(1) G.L.H. 661; and (ii) Parmar Dipubhai B & Ors. Vs. Registrar of Co-operative Societies & Ors., 2006(2) G.L.H. 659. That though latter decision was relatable to exercise of powers under Section 160(1) of the Act, the same principles would apply while deciding as to whether under Section 82(1) of the Act the Registrar can call for information as regards appointment of employees.

Following decisions were cited in support of the aforesaid submissions:

(a) *Union Public Service Commission Vs. Girish Jayanti Lal Vaghela & Ors.*, AIR 2006 SC 1165, with special reference to Paragraph No.12;

(b) *Zoroastrian Co-operative Housing Society Ltd. & Anr. Vs. District Registrar Co-operative Societies (Urban) & Ors.*, JT 2005 (4) SC 337, with special reference to Paragraph No.12;

(c) *Inderpreet Singh Kahlon & Ors. Vs. State of Punjab & Ors.*; AIR 2006 SC 2571, with special reference to Paragraph Nos.76 and 77;

(d) *State of N.C.T. Of Delhi & Anr. Vs. Sanjeev alias Bittoo*, AIR 2005 SC 2080, with special reference to Paragraph Nos.15 and 16;

(17) Learned Advocate General appearing on behalf of the respondent authorities submitted in response to the last contention that the petitioner cannot claim to be put at par with a private employer considering the status of the Union which is a federal society. That under Section 4 of the Act for the purposes of registering a society, the object has to be promotion of the economic interests or general welfare of the members of the society or of the public, in accordance with the principles of co-operation. Therefore, according to him, the petitioner cannot claim that the petitioner is not answerable as to the details of process of recruitment.

17.1) During course of hearing one of the issues raised on behalf of the petitioner was that inquiry under Section 86 of the Act has been initiated and is pending and, therefore, the action under Section 76B of the Act for alleged breach of order under

Section 82 of the Act is not warranted. Learned Advocate General responded to the said submission by pointing out that both the provisions are independent of each other and Section 86 of the Act relates to inquiry into the constitution, working and financial conditions of the society; while, Section 82 of the Act pertains to acts and obligations of the society; but Section 76B of the Act, independent of Sections 82 and 86 of the Act, relates to power available under the statute for removal of an officer. That exercise of such powers under Section 76B of the Act was not dependent either upon completion or non-completion, namely, pendency of proceedings under one or the other provisions of the Act.

17.2) After reading extensively from the show cause notice it was submitted that the petitioner was specifically put to notice as to whether recruitment of as many as 461 persons was necessary, and whether it was in the interest of the Union ?

17.3) That the show cause notice came to be challenged before this Court and the High Court in its order

dated 09.10.2006 has merely observed that the preliminary issue be decided as such before adverting to other issues arising in the show cause notice. That there was no question of breach of the order dated 09.10.2006 as contended, because the High Court never directed that the authority should not decide the other issues.

17.4) Responding to the contention regarding violation of principles of natural justice it was submitted that the impugned order itself records, and the record establishes, that number of adjournments were granted as prayed for on behalf of the petitioner for responding to the show cause notice.

17.5) That merely because the service of the order was effected on 26.01.2007 that fact by itself could not establish that the order was passed in hot haste Considering the time taken from the date of the show cause notice, the number of adjournments granted, the number of replies filed by the petitioner, it was apparent that the order was passed after giving full and proper opportunity of hearing

and there was no haste made while passing the order. It was submitted that the Court was required to only examine as to whether there was haste made in the decision making process and not whether there was haste made in the service of the order. This submission was in response to the various authorities cited on behalf of the petitioner on this count.

17.6) Responding to the contention regarding non-applicability of provisions of Section 82 of the Act it was submitted that the scope of the provision had to be ascertained in the context of the setting of the provisions. That the said section appears in Chapter VII which pertains to management of societies and takes within its fold Sections 73 to 83 of the Act. Therefore, Section 82 cannot be read in isolation and even on a plain reading of Section 82(1) of the Act the details called for were very much amenable to the provisions and the exercise of powers was perfectly in order.

17.7) That in fact the order under Section 82 of the Act had never been challenged and could not be the basis for assailing validity of the order made under Section 76B of the Act.

17.8) That the petitioner having submitted various replies could not be heard to state that the liability as regards recruitment was not of the petitioner but only of the Managing Director. This was in response to the contention raised on behalf of the petitioner by referring to the resolution dated 28.07.2005 made by the Union giving the power of recruitment of staff to the Managing Director.

17.9) It was also submitted that the petition need not to be entertained as alternative remedy under provisions of Section 155 of the Act was available to the petitioner.

17.10) Inviting attention to provisions of Section 76B of the Act it was submitted that the said provision was applicable (a) for the default of being negligent in performance of the duties imposed on the petitioner

by the Act, or the Rules, or the Bye-laws, (b) or for the default of doing anything which is prejudicial to the interest of the society. That the petitioner was in overall charge of the matters and had control as provided by Bye-law No.44 and, therefore, any default rendered him liable.

17.11) Responding to the last submission on behalf of the petitioner that the show cause notice did not provide for removal of the petitioner as a member director but was only in relation to his post as a chairman, learned Advocate General submitted that the show cause notice was specific in terms and referred to the petitioner, both as a member and as a chairman.

17.12) It was submitted that the petitioner had all along insisted on there being lack of jurisdiction with the respondent authority as, according to the petitioner, the Union was a Multi-State Co-operative Society, but factually this was not correct, as there was no evidence on record to show compliance with provisions of Section 22 of the MSCS Act; in fact the petitioner had failed to produce either certificate of

registration of the amendment or the certificate of registration of the society by the Central Registrar.

17.13) That the disqualification provided under Section 76B(2) of the Act was only a consequence of the order made under sub-section (1) of Section 76B of the Act.

17.14) Lastly, it was submitted that in the alternative, the authority was prepared to hear the petitioner on merits, if so directed by the Court.

(18) In rejoinder Mr. Shelat, learned Senior Counsel, submitted that the show cause notice did not contemplate either removal as a member director or disqualification in exercise of powers under Section 76B(2) of the Act. Responding to the query which was put by the Court to the counsel as to whether while challenging order under Section 76B of the Act was it open to the petitioner to challenge the order under Section 82 of the Act, it was submitted that as laid down by the Apex Court in the case of M/s. Anantharam Veerasinghaiah & Co. Vs. Commissioner

of Income-tax, Andhra Pradesh, AIR 1990 SC 1146 in penal proceedings it was always open to challenge the quantum of assessment even if the assessment was not independently challenged. That the authority was bound to examine independently on his own the validity and correctness of the order under Section 82 of the Act before relying on such an order for the purpose of passing an order under Section 76B of the Act. That even order under Section 82 of the Act took into consideration the fact that under Bye-law No.50(7) of the Bye-laws, the obligation was that of the Managing Director to furnish the information called for and hence also, the petitioner could not be held liable.

18.1) Lastly reliance was placed on the observations made by this Court in Paragraph Nos.84, 85, and 86 in the case of Amreli District Co-operative Sale & Purchase Union Ltd. & Ors. Vs. State of Gujarat, 1984(2) GLR 1244.

(19) The principal plank of challenge has been non-

availability of jurisdiction under Section 76B of the Act to the respondent authority because, according to the petitioner, the Union being a Multi-State Co-operative Society under the MSCS Act respondent No.1 authority was divested of his jurisdiction. For that purpose one may examine the requirement of the MSCS Act. Under Section 3 clause (a) defines “area of operation” to mean the area from which the persons are admitted as members. Section 4 of MSCS Act provides for appointment of the Central Registrar who is empowered to register a Multi-State Co-operative Society. As to which society can be registered as a Multi-State Co-operative Society is laid down in Section 5 of MSCS Act, and Section 6 provides for the modality for making an application for registration. Section 7 provides for registration, and after such registration is granted a registration certificate is to be issued by the Central Registrar under Section 8 of the MSCS Act. However, these provisions apply in the case of a society which is seeking registration per se under the provisions of MSCS Act.

(20) In case of a society which is already in existence and seeks conversion into a Multi-State Co-operative Society, Section 22 lays down the requirements. Under sub-section (1) of Section 22 of the Act, it is provided that a co-operative society may, by an amendment of its bye-laws, extend its jurisdiction and convert itself into a Multi-State Co-operative Society; but the proviso thereunder stipulates that the amendment of bye-laws of a society shall not be valid unless the amendment is registered by the Central Registrar. Under sub-section (2)(a) of Section 22 of MSCS Act every proposal for amendment of bye-laws shall be forwarded to the Central Registrar in accordance with the provisions of Section 11(4) of the MSCS Act. Section 11 provides for amendment of bye-laws of a Multi-State Co-operative Society and under sub-section (4) thereof the modality for making an application for registration of an amendment, including the details which should be annexed to the application, is provided for. For the present it is not necessary to enter into any detailed discussion of the said

requirement. Suffice it to state that there is an elaborate procedure and various factual evidences are required to be annexed to the application seeking amendment of bye-laws and its registration.

(21) Reverting back to the provisions of Section 22(2)(b)of the MSCS Act, a bare perusal shows that for the purposes of registration of an amendment the Central Registrar is required to satisfy himself that such amendment – (i) fulfills the requirement of members being from more than one State; and (ii) is in accordance with the provisions of Section 11(4) of the MSCS Act. Such satisfaction has to be after consultation with the Registrars of Co-operative Societies of the States concerned. In other words, the provision gives an enabling power and vests the Central Registrar with discretion to register, or not to register. This becomes abundantly clear when one reads sub-section (4) of Section 22 of the MSCS Act, because under sub-section (4) the Central Registrar is empowered to refuse registration, albeit by supplying reasons for such refusal. However, the

proviso below clause (b) of sub-section (2) of Section 22 of the MSCS Act specifically provides that no co-operative society shall be deemed to have been converted into a Multi-State Co-operative Society on any ground whatsoever unless such society is registered as Multi-State Co-operative Society.

(22) Under sub-section (3) of Section 22 of the MSCS Act the Central Registrar is required to forward to the society a copy of the registered amendment together with a certificate under his signature and such certificate is conclusive evidence to show that amendment has been registered. This is followed by sub-section (5)(a) of Section 22 of the MSCS Act which provides that from the date of registration of the amendment the society shall become a Multi-State Co-operative Society and the Central Registrar shall forward a certificate under his signature to the effect that such a co-operative society has been registered as a Multi-State Co-operative Society under the MSCS Act; under sub-section (5)(b) of Section 22 of the MSCS Act a copy of such

certificate shall be forwarded to the Registrar of Co-operative Society of the concerned State. Thereupon, under sub-section (5)(c) of Section 22 of the MSCS Act the Registrar of Co-operative Society of the concerned State shall make an order directing that the society in question ceased to be a society under the law relating to co-operative societies in force in that State.

(23) On 30.10.2006 when the petitioner submitted the first reply to respondent No.1 authority it was stated:

> "As per the above provisions, Sagar Dairy is a co-operative society registered under the law relating to the co-operative societies under the State Act. Hence, now got the object not confined to one State. Hence, because of the provisions of Section 2 of the Multi-State Act, the provisions of Multi-State Act are applicable to Sagar Dairy and the provisions of State Act cannot be made applicable. For all purposes, Sagar Dairy is a society under the Multi-State Act, 2002. I have clearly disclosed that under the provisions of Section 2 of the Multi-State Act, all co-operative societies with the object not confined to one State and which may have been incorporated prior to 2002 straightaway

covered under the Multi-State Act. In that event, the notice under Section 76-B of the State Act is not tenable in the eyes of law as the State Act is not applicable. Your goodself is having the powers of Central Registrar for the Gujarat State and your goodself is quite aware that Sagar Dairy has got object in more than one State i.e. Haryana, Delhi and surrounding areas. In that event, I request your goodself to consider the evidence enclosed herewith and decide in pursuance of the directions issued by the Honourable Gujarat High Court in Special Civil Application No.21337 of 2006 which has been rightly understood by Your Honour in the letter dated 19.10.2006.

7. I submit that now it is clear that under the object, Sagar Dairy has purchased the land at Haryana, installed the plant and machineries and other equipments, processing milk, manufacturing milk products at Haryana and marketing the same at Haryana, Delhi and surrounding areas. Hence, the object itself has expanded to more than one States.

8. I am giving the reply on limited purpose as requested by your goodself in the letter dated 19.10.2006. I reserve my right to give further reply on the points of show cause notice dated 31.08.2006, but I am sure that such occasion may not arise.

9. I am submitting the reply before 1.11.2006. I am sure that your goodself would be satisfied with my reply, but I also request that if your goodself is not satisfied with the reply, kindly give me personal hearing so that I can convince your goodself in personal hearing. I also request that reply is limited as per your letter dated 19.10.2006. I am deeply obliged."

23.1) This was followed by reply dated 11.12.2006 whereunder the petitioner stated:

"2. Upon receipt of the said application raising preliminary contentions into the jurisdiction of the authority in initiation of the proceedings under Section 76B of the Act, the hearing on the said application raising preliminary point was fixed by the Hon'ble authority on 20.11.2006 and that the oral submissions have been made in support of the contentions raised in the said application raising preliminary point regarding the jurisdiction and institution of the proceedings under Section 76B of the Act in relation to a multi-state cooperative society. Upon conclusion of the hearing of the said application and at the suggestion of the Hon'ble authority, the advocate of the opponent herein had agreed for rendering the decision on the preliminary point application along with

the final decision of the show cause notice. However, the said agreement was made as per the suggestion by the advocate of the applicant-opponent herein. However, the opponent submits that the society being a multi-state cooperative society, the opponent bonafide believes that for rendering complete justice and as the applicant is the Chairman of a multi-state society, the applicant believes that no proceedings could have been instituted against the applicant-opponent herein under the provisions of the Gujarat Cooperative Societies Act, 1961 and, therefore, the applicant submits that the application raising the preliminary point as to the jurisdiction and the authority to institute proceedings for removal of an office bearer of multi-state society deserves to be decided at the first instance. The applicant-opponent herein, therefore, submits that it is just, fit and expedient and in the interest of justice that the decision on the preliminary application raising preliminary point as to the jurisdiction in institution and initiation of the proceedings raised in the application dated 30.10.2006 and heard on 20.11.2006 may kindly be decided first as the application raising preliminary contentions and not simultaneously at the time of decision on the inquiry."

23.2) The third reply came on 18.12.2006 and the petitioner stated as under:

> “..... The hearing of the said application raising preliminary point was fixed on 20.11.2006 and during the course of hearing of the said application, the suggestion was made as to whether the Mehsana District Co-operative Milk Producers' Union Limited (hereinafter referred to as 'the Union') has been granted registration by the Central Registrar under the Multi-State Co-operative Societies Act or not. However, the submission was made since the society is a multi-state cooperative society having operational activities from within the State of Gujarat as well as outside the State of Gujarat. Upon consideration of the expansion of the activities outside the State of Gujarat upon getting permission and sanction for investment under Section 71 of the Act from the competent authority, the society has become a multi-state Cooperative society and accordingly, note has also been taken by a requisite decision of expansion programme of the society by the general body. The aforesaid facts through bonafide mistakes were not placed before the Hon'ble authority.
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> 2. During the course of the submissions and hearing of the said preliminary point, the things revealed have now also been complied with and

accordingly, the Executive Committee of the Multi-State Cooperative Society, the Union in its meeting held on 7.12.2006 has also passed the requisite resolution and transacted the business as per Item No.6 of the said agenda notice dated 5.12.2006. A copy of the said Agenda notice is produced herewith at ANNEXURE-A to this application. Pursuant to the decision being taken by the Executive Committee, the committee also decided to call for the special general body meeting of the Union in exercise of the power under Section 77 of the Act read with relevant bye-laws and accordingly, the special general body meeting of the members of the Union has been called on 25.12.2006. The agenda of the said notice calling the meeting of the general body under Section 73 of the Act is to be held on 25.12.2006. A copy of the said agenda notice is produced herewith at ANNEXURE-B to this application. The said agenda is also published in the newspaper by way of public notice to all the members concerned to attend the said special general body meeting of the members. One of the agenda item is for amendment of the bye-laws as can be seen from the said agenda Annexure-B. That the Registrar, Mehsana District Cooperative Milk Producers' Union Ltd. has also been informed and communicated accordingly. Under these circumstances, it is apparent that if the general body in exercise of

its authority under Section 73 of the Act takes a decision in consonance with the decision of the Executive Committee then, the proceedings would be in futility and will have no consequence in any case. Under the circumstances, the aforesaid development of the fact pending the proceedings of hearing of the notice dated 31.8.2006 deserves to be considered in the interest of justice for rendering a decision on the application raising preliminary point as to the jurisdiction.

3. It is, therefore, prayed that the Hon'ble authority may consider the aforesaid facts, circumstances, events, decision and documents in support of the application raising preliminary point as to the jurisdiction in instituting and issuing the show cause notice under Section 76B of the Act to the office bearers. It is also prayed that the Hon'ble authority will be pleased to consider the aforesaid facts, decision, documents and the proceedings for effective decision on the application raising preliminary point.

4. AND IN THE ALTERNATIVE, it is prayed that in view of the aforesaid facts and circumstances, the Hon'ble authority will be pleased to order to keep the proceedings in abeyance for a reasonable period until the decision into the preliminary point as to

jurisdiction is taken by a general body of the Union or till a reasonable period thereafter pending the decision as to the registration in the interest of justice."

(24) In context of the provisions of the Act, the provisions of the MSCS Act and the submissions made by the petitioner the question that requires to be answered is whether respondent No.1 authority has committed an error which is apparent in law when respondent No.1 authority came to the conclusion that the Union is not a Multi-State Co-operative Society, at least not till the date the impugned order was made. Can one state that the decision making process is vitiated so as to strike down the impugned order as being bad in law.

(25) As noted hereinbefore in reply dated 30.10.2006 the only ground on which the Union has been projected to be a Multi-State Co-operative Society is applicability of provisions of Section 2 of MSCS Act. According to the petitioner, as the Union is a co-operative society registered under the law relating

to co-operative societies under the State Act and on 30.10.2006 the object was not confined to one State the Union had become a Multi-State Co-operative Society. In support of the submission that the Union had an object which was not confined to one State, the petitioner has relied upon the purchase of land at Haryana, installation of plants and machineries, other equipments and processing of milk, manufacturing of milk products at Haryana and marketing the same at Haryana, Delhi and surrounding areas. Nowhere in the reply is there reference to the requirements of members being from more than one States as provided in the definition of 'area of operation' under Section 3(a) of the MSCS Act. There is another inherent indication in the Act: Section 6 of the MSCS Act provides that the application for the purposes of registration is required to be signed by members from each of the States concerned; or authorized representatives on behalf of at least five such societies as are not registered in the same State. The petitioner may contend at this stage that this provision would be

applicable in case of a society which is seeking registration under the MSCS Act for the first time and not in case of an existing society. This could be a correct contention but then the petitioner has to establish that the requirements of provisions of Section 22 of the MSCS Act stand satisfied.

(26) In the third reply tendered on 18.12.2006 the petitioner having realized the difficulty in supporting the stand that the petitioner had taken, the petitioner shifted the stand and stated that the correct facts were not placed on record due to bona fide mistake. In fact it is only on 05.12.2006 that the notice was circulated for the purposes of seeking amendment of the bye-laws and only on 07.12.2006 the Union passed the requisite resolution. Though it is stated that Union passed the resolution in fact it was the Board of Directors who passed resolution on 07.12.2006 and called for general body meeting on 25.12.2006. It is not necessary to record any further facts. Suffice it to state that till 25.12.2006 there was no amendment of the bye-laws of the Union and,

in the circumstances, there could be no occasion for the Union to present itself as a Multi-State Co-operative Society. If the Union could not do so, much less the petitioner. It is the status of the Union which determines the fact as to whether respondent No.1 authority had jurisdiction to act under Section 76B of the Act or not. Thus, the admitted facts establish that at lest till 25.12.2006 there was no amendment which could be made the basis for making an application under Section 11(4) of the MSCS Act so as to require the Central Registrar to make any order, either registering the amendment in the first instance, or registering the society thereafter. The proviso to sub-section (1) and the proviso after sub-clause (ii) of clause (b) of sub-section (2) of Section 22 of the MSCS Act override the main provisions. Mere amendment of bye-laws is not enough, such an amendment is not valid, unless registered by the Central Registrar. Nor is there any conversion from a Co-operative Society to a Multi-State Co-operative Society, on any ground whatsoever, even after the bye-laws are amended, unless such society is

registered as a Multi-State Co-operative Society by the Central Registrar. Therefore, it becomes more than abundantly clear that the petitioner had adopted a stand which the petitioner new to be at least incorrect in law, if not false. Paragraph No.4 of the communication dated 18.12.2006 goes to show that the petitioner was aware that the petitioner had taken a stand which did not have any factual foundation and hence, the prayer to keep the proceedings in abeyance till the point of time the decision as to registration is taken by the appropriate authority.

(27) In light of what is stated hereinbefore, the contention regarding violation of principles of natural justice requires to be examined. In the case of Sohan Lal Gupta (Dead) through Lrs. & Ors. Vs. Asha Devi Gupta (Smt). & Ors., (2003) 7 SCC 492 the Apex Court was called upon to determine as to what constitutes reasonable opportunity; the Supreme Court stated thus:

> **"23.** For constituting a reasonable opportunity, the following conditions are required to be observed :
>
> 1. Each party must have notice that the hearing is to take place.
>
> 2. Each party must have a reasonable opportunity to be present at the hearing, together with his advisers and witnesses.
>
> 3. Each party must have the opportunity to be present throughout the hearing.
>
> 4. Each party must have a reasonable opportunity to present evidence and argument in support of his own case.
>
> 5. Each party must have a reasonable opportunity to test his opponent's case by cross-examining his witnesses, presenting rebutting evidence and addressing oral argument.
>
> 6. The hearing must, unless the contrary is expressly agreed, be the occasion on which the parties present the whole of their evidence and argument."

(28) The Apex Court further discusses as to what extent the requirement of granting a reasonable opportunity to present a case can be extended, and

as to whether it is open to the Tribunal/authority/Court to qualify the right by managing the hearing. The same has been explained in the following terms:

> **“5-054**. *Qualification of the right*. -- The need to allow a party a reasonable opportunity to present his case can give rise to difficulties. To what extent can the Tribunal intervene where, for example, a party's submissions or evidence is needlessly long, repetitive, focuses on irrelevant issues or is sought to be made over an extended period of time ? What if a party ignores procedural deadlines imposed by the Tribunal but maintains he still has points to put before it in support of his case? Inevitably, each situation has to be dealt with in its own context but the following general considerations should be taken into account."

22. There cannot, therefore, be any doubt that a party does not have an unfettered right. The arbitrator cannot only ask a party to comply with procedural orders and directions including those imposing limits as to time and content of submissions and evidence but also the arbitrator also has a right of managing the hearing. In '*Russell on Arbitration*', 22nd Edn. the law is stated thus:

"***5.057***. *Managing the hearing.---Similarly*, a Tribunal cannot be expected to sit through extended oral hearings listening to long-winded submissions on irrelevant matters. The Tribunal is entitled, and under Section 33 is obliged and encouraged, to avoid the unnecessary delay and expense that would be caused by such an approach. The Tribunal should take a grip on the proceedings and indicate to the parties those areas on which it particularly wishes to be addressed and those which it does not consider relevant to the real issues in dispute. If a party fails to heed such guidance, the Tribunal might seek to focus the proceedings by allocating the remaining hearing time between the parties. This the Tribunal is entitled to do, provided it will allow a reasonable time for both parties to put forward their argument and evidence."

“29. The principles of natural justice, it is trite, cannot be put in a straightjacket formula. In a given case the party should not only be required to show that he did not have a proper notice resulting in violation of principles of natural justice but also to show that he was seriously prejudiced thereby. In The *Chairman, Board of Mining Examination and Chief Inspector of Mines & Anr. Vs. Ramjee* ((1977) 2 SCC 256), this Court held : (SCC Pg. 262. Paragraph 13)

"Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt -- that is the conscience of the matter."

(See also *Union of India & Ors. Vs. Anand Kumar Pandey & Ors.*, (1994) 5 SCC 663, and *R. S. Dass Vs. Union of India & Ors*. (1986) (Supp) SCC 617).”

(29) One more requirement that the Apex Court lays down in this context is that mere absence of appropriate notice may result in violation of principles of natural justice but that by itself is not sufficient, but the person aggrieved has to also show that he was seriously prejudiced by such violation.

(30) Applying the aforesaid tests to the facts at hand is it possible to state that the authority has violated principles of natural justice. The answer has to be an emphatic 'NO'. The proceedings effectively commenced after the order was made by this Court on 09.10.2006 when the petitioner was asked to tender his reply before the authority. At the cost of repetition, it is required to be noted that the petitioner filed replies on 30.10.2006, 11.12.2006, 18.12.2006 and 16.01.2007, all the while harping on recording a decision on preliminary issue of jurisdiction knowing fully well that on facts there was no issue required to be decided. The Union was never a Multi-State Co-operative Society at any point of time. Mere purchase of land, setting up of a plant and carrying on activities for procurement of milk and manufacturing of various milk products per se did not satisfy the requirements of the provisions of MSCS Act in any manner whatsoever. If these activities by itself were sufficient the legislature in its wisdom would have so provided. One cannot read something more than what is provided in the statute.

That is the cardinal principle of reading any provision of law.

(31) In such circumstances, even the contention that the petitioner did not reply on merits because the petitioner was under a bona fide impression that only after the preliminary issue was decided was the petitioner required to address the authority on merits does not merit acceptance. As already noted, while recording facts, on 20.11.2006 when the hearing took place the learned advocate for the petitioner was categorically informed by the authority that the petitioner must make submissions also on merits by the next date of hearing. Apart from that, the petitioner was aware, and this requires to be stated at the cost of repetition, that the Union did not fulfill the specified criteria for being termed as 'Multi-State Co-operative Society'. In the circumstances, the ground regarding violation of principles of natural justice, and also the order being vitiated because the authority did not decide the preliminary issue in the first instance, both are

required to be rejected. The High Court in its order dated 09.10.2006 merely stated that the preliminary issue be decided as a preliminary issue before adverting to other issues arising in the show cause notice. The word 'advert' is converse to the term 'revert'. The word “revert” means 'go back' or 'return to a previous state, practice.' As against that “advert” means 'refer to' (while speaking or writing). By use of the latter term 'advert', in its order dated 09.10.2006 all that was meant by the High Court was that proceed further after recording a decision on the preliminary issue, i.e. refer to other issues after deciding the preliminary issue. To read that order as to mean that the order must be pronounced as a separate order and the authority must then once again call upon the petitioner to make submissions on merits is not warranted considering the plain language used by the Court in Paragraph No.4 of the order dated 09.10.2006. In other words the Court never directed that decide only the preliminary issue.

(32) Order XIV Rule 2(2) of Code of Civil Procedure, 1908 (CPC) is only an enabling provision and gives discretion to the Court to postpone settlement of other issues. There is no mandate in the statute that only the preliminary issue should be decided. To the contrary under sub-rule (1) of Rule 2 of Order XIV of CPC the Court is normally expected to pronounce judgment on all issues, even if it is possible to decide and dispose of the case only on a preliminary issue. On this count, therefore, the impugned order cannot be faulted.

(33) Even if one assumes that the petitioner was misreading the observations of the High Court, once the petitioner was put to notice on 20.11.2006, the petitioner ought to have either complied with the requirement, namely, tendered a reply on merits or moved this Court for seeking a clarification as to what did the Court intend to state when it stated as it did in Paragraph No.4 of the order dated 09.10.2006. Unfortunately, for the petitioner, he did not proceed in either direction, neither replied on merits nor sought clarification.

(34) Though the learned advocate for the petitioner has addressed the Court at length as to applicability of provisions of Section 82 of the Act strictly speaking, it is not necessary to record any finding qua the said submission for the simple reason that the same were never issues raised before the authority and hence, the impugned order cannot be found to be erroneous on grounds which were never pressed into service before the authority. The Court is required to examine the decision making process for determining the correctness of the impugned order. It cannot be stated that the decision making process is vitiated by non-consideration of grounds which were never raised before the authority.

(35) Apart from that it is also necessary to take note of the fact that at the point of time when the District Registrar made an order under Section 82 of the Act, namely, on 04.02.2006 the petitioner did not think it fit to challenge the said order. This has to be appreciated in context of the resolution No.6 passed by the Board in the board meeting held on 14.02.2006 wherein after recording of facts the

board has specifically pointed out that provisions of Section 82(1) of the Act are not applicable in relation to the details called for by the District Registrar. Once the petitioner was armed with the said resolution it was upto the petitioner to raise the necessary challenge at appropriate point of time in appropriate proceedings In fact the resolution specifically empowered the petitioner and the Managing Director to take all appropriate steps as may be necessary including challenging the powers of the District Registrar. The petitioner has specifically stated so in his reply dated 16.02.2006 and recorded the view of Board. In the circumstances, the conduct of the petitioner precludes the petitioner from raising an issue which was, in the first instance, not challenged at the relevant point of time, and secondly not raised before the authority in response to show cause notice. The show cause notice was specific and pointed in so far as this default is concerned, namely, non-compliance of order dated 04.02.2006 made under Section 82 of the Act.

(36) There is one further aspect as to the conduct of the petitioner. In the reply dated 16.02.2006 filed by the petitioner, the petitioner has chosen to furnish certain details to the District Registrar which are found to be for the period when the petitioner was not the chairman of the Union, while at the same time withholding the information which was called for during the tenure of the petitioner as a chairman of the Union. If one goes through the information supplied along with communication dated 16.02.2006, it is a case of virtually no information, whatever information is given is general and vague. It is a classic case of an exercise in obfuscation. Hence, if the petitioner suffers as a result of such exercise, he can only blame himself.

(37) The contention based on Bye-law No.41(12) of the Bye-laws which permits the Board of Directors to exercise powers of appointment of Managing Director and other employees coupled with the resolution of the Board empowering the Managing Director to exercise the delegated powers of the

Board, suffice it to state that the petitioner as head of the Union does not get absolved by trying to shift the entire responsibility on the Managing Director. In fact when one goes through various replies tendered from time to time, including the communication relatable to order under Section 82 of the Act, the notice issued for defaults under Sections 147(d) and 148(d) of the Act, at each stage replies have been submitted under the signature of the petitioner and in none of the replies has the petitioner, at any point of time, suggested that it is not his liability but only that of the Managing Director. Apart from that, this issue also was not raised before the authority and hence, the authority had never any chance to deal with the said issue.

(38) Section 76B of the Act permits removal of an officer if, in the opinion of the Registrar, any officer – (i) makes persistent default in performance of the duties imposed on the officer by the Act, or the Rules or the Bye-laws; (ii) is negligent in performance of the duties imposed on the officer by the Act, or the

Rules or the Bye-laws; (iii) does anything which is prejudicial to the interests of the society; and (iv) stands disqualified by or under the Act, the Registrar may, after giving officer an opportunity of being heard, remove such officer. Each of the four defaults are in the alternative and though in given set of circumstances there may be some overlapping, yet there could be a situation where any one of the defaults may exist on its own. The contention that there was no breach of any duty on the petitioner in absence of any obligation may be correct in so far as the first two defaults are concerned. However, in relation to a default relatable to an action which is prejudicial to the interests of the society it is not necessary that there should be any duty/obligation cast upon the officer either under the Act or the Rules or the Bye-laws. The petitioner, as head of the Union, was holding a post in fiduciary capacity. Even if there has been no persistent default or negligence in discharge of his duties as chairman of the Union the petitioner has definitely acted in a manner which is prejudicial to the interests of the society.

Employment of a person entails financial liability for a substantial period of time on a permanent basis. Employment of 461 persons would definitely be adverse to or prejudicial to the interests of the Union, unless and until it is shown that the recruitment of these many persons was warranted by facts and circumstances; it is shown that not only was the recruitment necessary and in interest of the Union, but the persons so employed were qualified and capable of handling the work assigned to each one of them. In absence of any such details being provided by the petitioner, despite having been called upon to do so, the respondent authority was justified in raising an adverse presumption and exercising powers under Section 76B of the Act.

(39) It is not necessary to deal with each of the submissions made on merits for the simple reason that the petitioner had at no point of time raised any of the issues before the authority. The petitioner was granted reasonable and adequate opportunities. He took it upon himself not to avail of these

opportunities. The law is well settled that a person who is granted a reasonable opportunity of hearing cannot be permitted to extend the proceedings beyond a reasonable limit and the authority / Tribunal / Court is entitled to not only direct the party to make submissions or tender evidence and focus only on the relevant issues without being needlessly long, repetitive and referring to irrelevant issues over an extended period time. The authority / Tribunal / Court is entitled to manage the hearing and principles of natural justice cannot be confined to a straightjacket formula. A person who does not avail of the opportunities granted cannot be heard to make a grievance about violation of principles of natural justice.

(40) The ground regarding the order having been made in hot haste is not tenable. Merely because service of the order is effected on a public holiday that factor by itself is not sufficient to indicate that the decision making process was hurriedly undertaken. There is no material for such a finding.

(41) In the aforesaid factual matrix and position of law it is not possible to state that the decision making process is vitiated in any manner. In light of the principles enunciated by the Apex Court in the case of Surya Dev Rai Vs. Ram Chander Ari & Ors., (2003) 6 SCC 675 it cannot be stated that there is any failure of justice so as to require this Court to intervene in exercise of its extraordinary jurisdiction. The High Court does not function as an appellate Court and is not required to enter into re-appreciation of evidence.

(42) The petitioner has made various allegations about political mala fides in the petition. The learned Senior Advocate for the petitioner made a reference in the passing but it is not necessary to deal with such allegations once the Court has come to the conclusion in light of the settled legal position and the facts of the case that the petitioner has failed to make out any case. Furthermore, respondent No.2 has categorically denied such allegations in the affidavit-in-reply filed by him.

(43) The petition, therefore, does not merit acceptance. The only issue that survives is whether the impugned order is incorrect in so far as it removes the petitioner, both from the post of member director as well as the chairman of the Board of Directors. When one reads the show cause notice it is apparent that the show cause notice was for the purposes of removing the petitioner as a member of the committee and as a chairman. The Gujarati term appearing between the words “member of the committee” and “chairman” “nava” does not make any sense but if the same is read as “tathha” i.e. 'also', then the entire sentence reads correctly. Thus there is an apparent typographical error and the show cause notice was for the removal of the petitioner as a member of the committee and also from the post of chairman. Therefore, on this count also, it is not possible to find any fault with the impugned order.

(44) In so far as order as to disqualification is concerned, it is apparent that the provision only envisages that

the Registrar may, by order, direct that the officer so removed shall be disqualified. i.e. the order falls as a consequence.

(45) However, in relation to quantum of period of disqualification, it would be open to the petitioner to point out if there are extenuating circumstances and for this purposes the petitioner must be given an opportunity of bringing the same to the notice of the authority before the period of disqualification is fixed. In the circumstances the petitioner is directed to approach the respondent authority within a period of 01 (one) week from today in relation to quantum of period of disqualification. Upon the petitioner so approaching, the respondent authority shall take into consideration the submissions of the petitioner qua the period of disqualification and shall pass a supplemental order only in so far as the quantum of the period of disqualification is concerned. Such an order shall be made within a period of 02 (two) weeks from the date of hearing.

(46) Subject to the aforesaid direction the petition stands rejected. RULE discharged. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

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Bhavesh*